

Message Text

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PASS COMMERCE (DWYER)

E.O. 11652: N/A
TAGS: EFIN, ETRD, OECD
SUBJECT: INSURANCE COMMITTEE MEETING: DECEMBER 16-17

REF: (A) OECD PARIS 2347, (B) STATE 302570,
(C) EC BRUSSELS 12428

1. BEGIN SUMMARY: HIGHLIGHT OF INSURANCE COMMITTEE
MEETING DECEMBER 16 AND 17 WAS INDICATION THAT EC IS
NOW PREPARED (AS RESULT OF PRESSURE FROM US AND OTHERS)
TO TREAT THIRD COUNTRY LIFE INSURANCE COMPANIES MORE
EQUITABLY WITH RESPECT TO FINANCIAL AND SOLVENCY
REQUIREMENTS. HOWEVER, THERE IS A CONTINUED PATTERN OF
EC DISCRIMINATORY TREATMENT IN OTHER ASPECTS OF INSUR-
ANCE AS EVIDENCED BY CURRENT STATUS OF DRAFT DIRECTIVE
ON FREEDOM OF SERVICES. THUS CONTINUED VIGILANCE AND
FIRM US STANCE AGAINST MEASURES PLACING THIRD COUNTRY
INSURANCE FIRMS AT COMPETITIVE DISADVANTAGE ARE IMPORT-
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ANT. QUESTION OF EXTENT TO WHICH RELATIVELY DORMANT
OECD INSURANCE COMMITTEE CAN BE USEFUL IN PROMOTING US
INTERESTS IN THIS FIELD IS SUBJECT OF SEPTTEL.
END SUMMARY.

2. INSURANCE COMMITTEE (IC) MET DECEMBER 16 AND 17

WITH SOME USEFUL RESULTS DESPITE BEING FACED WITH CYNICAL SECRETARIAT, INEFFECTIVE CHAIRMAN (BASYN OF BELGIUM), LATE APPEARANCE OF DOCUMENTS, AND FOR A WHILE NO TRANSLATION AS A CONSEQUENCE OF OECD STAFF STRIKE. EC COMMISSION SPOKESMAN (IMBERT) ESSENTIALLY SPOKE FOR THE NINE ON MOST MATTERS IN LIGHT OF ONGOING EC INSURANCE HARMONIZATION EFFORTS. DESPITE HISTORICAL EVIDENCE TO CONTRARY, CHAIRMAN APPARENTLY FAILS TO APPRECIATE THAT IC CURRENTLY IS NO MORE THAN FORUM FOR EXCHANGE OF INFORMATION AND THAT FORMAL RECOMMENDATIONS TO COUNCIL FOR MEASURES SUPPORTING OECD-WIDE LIBERALIZATION OF INSURANCE WILL REMAIN INAPPROPRIATE UNTIL THERE IS REAL PROSPECT THAT MEMBER COUNTRIES WILL ACCEPT SUCH LIBERALIZATION. THIS PROSPECT BASICALLY HINGES ON EC DEVELOPMENTS (SEE BELOW). SEPTTEL RAISES QUESTION OF FUTURE ROLE ENVISIONED BY USG FOR IC.

3. PRACTICES REGARDING SPECIALIZATION.

TOUR DE TABLE ON INDIVIDUAL COUNTRIES' PRACTICES RE SEPARATION OF INSURANCE ACTIVITIES COVERED: (A) LIFE VS. NON-LIFE ("MAJOR" SPECIALIZATION) AND (B) WITHIN NON-LIFE AREA ("MINOR" SPECIALIZATION). MAJOR SPECIALIZATION IS ESTABLISHED IN MOST OECD COUNTRIES. DISCUSSION OF MINOR SPECIALIZATION FOCUSED LARGELY ON POSSIBLE CONFLICTS OF INTERESTS IN LEGAL INSURANCE, PARTICULARLY ON WHETHER PROTECTION EXTENDS TO JUDGMENTS AS WELL AS LAWYERS' FEES AND WHETHER INSURER CONTROLS THE CASE. MOST COUNTRIES EITHER HAVE NOT DEVELOPED SUCH INSURANCE OR DO NOT REQUIRE THAT IT BE SPECIALIZED LIMITED OFFICIAL USE

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(EXCEPT FRG WHICH HAS HIGHLY DEVELOPED MINOR SPECIALIZATION). CONSIDERABLE INTEREST EXPRESSED IN US EXPERIENCE WITH MALPRACTICE INSURANCE. US DISTRIBUTED TECHNICAL PAPER (PARA 2, REF B).

4. EC REQUIREMENTS FOR THIRD COUNTRY LIFE OPERATIONS.

(AT PREVIOUS IC MEETING EC HAD REVEALED DISCRIMINATORY ASPECTS AGAINST NON-EC COMPANIES IN DIRECTIVE CONCERNING FREEDOM OF ESTABLISHMENT IN LIFE INSURANCE. SOLVENCY AND GUARANTEE FUND REQUIREMENTS SPELLED OUT IN DRAFT DIRECTIVE WOULD HAVE PERMITTED EC COMPANIES TO INCLUDE BOTH EXPLICIT AND IMPLICIT RESERVES, WHILE PERMITTING EC BRANCHES OR AGENCIES OF THIRD COUNTRY COMPANIES TO INCLUDE ONLY EXPLICIT RESERVES SO THAT THE LATTER WOULD HAVE TO CONTRIBUTE CONSIDERABLE ADDITIONAL FUNDS TO MEET REQUIREMENTS.) EC REP INDICATED THAT, IN DEFERENCE TO CONCERNS OF NON-EC MEMBERS (US AND OTHERS HAD PROTESTED

AT JANUARY MEETING), THE REVISED DIRECTIVE ALLOWS
BRANCHES AND AGENCIES OF THIRD COUNTRIES TO INCLUDE
IMPLICIT RESERVES IN MEETING THEIR SOLVENCY REQUIREMENTS

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IN THE SAME WAY AS DO EC COMPANIES.

5. COOPERATION BETWEEN SUPERVISORY AUTHORITIES
(SEE DAF/AS/76.1).

IC DEFERRED DECISION ON WORKING GROUP'S DRAFT PROPOSAL
TO PROVIDE LEGAL BASIS AND COOPERATIVE MACHINERY BETWEEN
INSURANCE SUPERVISORY AUTHORITIES. ALTHOUGH THERE WAS
GENERAL SUPPORT FOR SUCH COOPERATION, IT APPEARED THAT
EC IS HAVING DIFFICULTIES IN DETERMINING WHETHER COMMIS-
SION OR MEMBER COUNTRIES WOULD NEGOTIATE BILATERAL
TREATIES WITH THIRD COUNTRIES, AS ENVISIONED BY DRAFT.
IT WAS ALSO RECOGNIZED THAT BILATERAL AGREEMENTS WOULD
ONLY BE APPROPRIATE FOR CERTAIN COUNTRIES. SECRETARIAT
CAUTIONED IC THAT NATIONAL DELEGATES MUST OBTAIN PRIOR
ASSURANCE OF THEIR COUNCIL DELEGATES' CONCURRENCE TO AN
IC PROPOSAL (CURRENTLY IN FORM OF REPORT TRANSMITTING
DRAFT COUNCIL RECOMMENDATION) GIVEN PAST SITUATIONS

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WHEREBY COUNCIL HAD REJECTED IC PROPOSALS BECAUSE EC GOVERNMENTS NOT PREPARED TO SUPPORT THEM DUE TO ONGOING DISCUSSIONS WITHIN COMMUNITY. US REP (DWYER) ENDORSED THIS CAUTIONARY VIEW AND EMPHASIZED THAT US COULD NOT COMMIT ITSELF TO THE PROPOSALS BUT WOULD SUPPORT THEM IN PRINCIPLE AND WOULD COOPERATE WITHIN THE LIMITS OF US REGULATORY SITUATION.

6. EC DIRECTIVE ON FREEDOM OF SERVICES.

EC REPS REVIEWED PROGRESS ON THIS DIRECTIVE, IMPLYING THAT AGREEMENT ON FINAL TEXT WAS NOT NEAR. CURRENT DRAFT (PROPOSED BY COMMISSION) IS APPARENTLY NOT MUCH DIFFERENT FROM VERSION PUBLISHED ON JANUARY 12, 1976 AND CIRCULATED PREVIOUSLY. PROVISIONS DEALING WITH BRANCHES AND AGENCIES OF THIRD COUNTRIES CALL FOR SUBSTANTIALLY SAME PRIVILEGES AS FOR EC COMPANIES. HOWEVER, EC REP EXPECTED THAT MEMBER COUNTRIES WILL REJECT THIS APPROACH. LIKELY COMPROMISE WOULD BE TO ALLOW BILATERAL AGREEMENTS BETWEEN EC AND THIRD COUNTRIES ANALOGOUS TO THOSE PROVIDED FOR IN THE NON-LIFE AND LIFE DIRECTIVES. EC REP ARGUED THAT, SINCE THIRD COUNTRY BRANCHES AND AGENCIES ARE NOT SUBMITTED TO SAME STRICT FINANCIAL REQUIREMENTS AS EC COMPANIES, IT WAS NECESSARY TO DEVELOP SUCH RECIPROCAL AGREEMENTS IF THEY ARE TO HAVE SAME BENEFITS AS EC COMPANIES. THE CONTINUING OVERRIDING ISSUE HERE CONCERNS RECIPROCAL TREATMENT FOR US AND OTHER THIRD COUNTRY INSURERS WITHIN EC. THE NON-LIFE DIRECTIVE ALREADY IN EFFECT, THE PROPOSED SERVICES DIRECTIVE, AND MOST PROBABLY THE OTHER EC DIRECTIVES UNDER CONSIDERATION CONTAIN DISCRIMINATORY PROVISIONS AGAINST THIRD COUNTRY INSURERS INIMICABLE TO INTERESTS OF THESE COUNTRIES. PRESENTLY, ONLY SOLUTION TO THESE PROBLEMS WOULD BE BILATERAL AGREEMENTS BETWEEN THIRD COUNTRIES AND EC. IN THIS CONTEXT PROTOTYPE BILATERAL AGREEMENT BETWEEN SWITZERLAND AND THE COMMUN-

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ITY WAS DISCUSSED. IT APPEARS THAT THESE NEGOTIATIONS ARE NOT MAKING PROGRESS THAT HAD BEEN ANTICIPATED. EC APPARENTLY EXPECTS SWISS AUTHORITIES TO ADAPT THEIR LAWS SO AS TO BE ALMOST IDENTICAL TO INSURANCE REGULATIONS IN EC. (COMMENT: FIRM ADHERENCE TO THIS PRINCIPLE WOULD SEVERELY PREJUDICE THE LIKELIHOOD OF SUCCESSFUL FUTURE

NEGOTIATIONS WITH US OR OTHER COUNTRIES.)

7. REQUEST BY BIPAR TO ATTEND IC MEETINGS (SEE

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DAF/AS/74.12, 1ST REV.).

VIRTUALLY ALL COUNTRIES EXCEPT US OPPOSED BIPAR ATTEND-
ANCE AS OBSERVER IN IC. US REP, NOTING LARGE NUMBER OF
BROKERS IN US WHO ARE INTERESTED IN INTERNATIONAL
DEVELOPMENTS, SAID WE HAD NO OBJECTION TO BIPAR ATTEND-
ANCE BUT AGREED TO PROPOSAL THAT THEY BE INVITED ONLY
FOR AGENDA ITEMS FOR WHICH IC CONSIDERED THEIR PARTICI-
PATION USEFUL.

8. REVIEW OF LEGISLATIVE AND OTHER DEVELOPMENTS IN
INSURANCE FIELD.

INCLUSION FOR FIRST TIME OF THIS TOPIC AS EXPLICIT
AGENDA ITEM (AT US REQUEST) WAS WELL-RECEIVED, ALTHOUGH
MOST OTHER MEMBERS WERE UNPREPARED. THIS ITEM WILL NOW
BE REPEATED IN FUTURE MEETINGS. US REPS SUMMARIZED
DEVELOPMENTS AS SET FORTH PARAS 8 AND 9 OF REF B. THERE

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WAS CONSIDERABLE INTEREST IN LEGISLATION INTRODUCED IN LAST SESSION OF CONGRESS TO ALLOW FEDERALLY CHARTERED AND REGULATED INSURANCE COMPANIES. US DISCUSSION OF PRODUCTS LIABILITY ELICITED COMMENTS BY EC REP ON DRAFT EC PRODUCTS LIABILITY DIRECTIVE AND AGREEMENT TO REVIEW PROGRESS ON THIS DIRECTIVE AT NEXT IC MEETING.

9. NEXT IC MEETING SCHEDULED FOR MAY 17 AND 18.

10. IN CORRIDORS, CHAIRMAN OF INFORMAL SUCCESSOR TO IC WORKING PARTY ON INSURANCE IN DEVELOPING COUNTRIES (TOREN, SWEDEN) SAID HE WOULD BE CALLING A MEETING OF THIS GROUP B CAUCUS ON OCTOBER 13 AND 14 TO PREPARE FOR UNCTAD CONSIDERATION, AT ITS OCTOBER MEETING, OF SUBJECTS OF LARGE RISKS, MARINE INSURANCE PROBLEMS OF LAND-LOCKED NATIONS, AND INSURANCE COOPERATIVES. (COMMENT: IT MAY BE USEFUL TO CONSIDER ARRANGING FOR TOREN GROUP TO RECEIVE ADMINISTRATIVE SUPPORT FOR MEETING FROM DEVELOPMENT COOPERATION DIRECTORATE OF SECRETARIAT SINCE, GIVEN CURRENT STATUS OF IC, FINANCIAL AND FISCAL DIRECTORATE FEELS UNABLE TO PROVIDE MORE THAN MINIMAL ASSISTANCE.)

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